GIDEON KRACOV
Attorney at Law
801 South Grand Avenue
11th Floor
Los Angeles, California 90017

(213) 629-2071
Fax: (213) 623-7755

gk@gideonlaw.net
www.gideonlaw.net

JUN 15 2016

June 7, 2016

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Craig Walsh, Director
Ardagh Metal Packaging USA, Inc.
936 Barracuda St.
Terminal Island, CA 90731

Frank Luna, Agent for Service of Process
Ardagh Metal Packaging USA, Inc.
936 Barracuda St.
Terminal Island, CA 90731

David Wall, CEO Metal Packaging Division
Ardagh Group S.A.
Carnegie Office Park, Building One
600 N. Bell Ave., Suite 200
Carnegie, PA 15106

Re: Notice of Violation/Intent to File Suit Under Federal Water Pollution Control Act

Dear Mr. Walsh, Mr. Luna and Mr. Wall:

I am writing on behalf of the Los Angeles Waterkeeper ("Waterkeeper" or "LAW") regarding violations of the Federal Water Pollution Control Act ("Clean Water Act" or "Act"), 33 U.S.C. § 1251 *et seq.*, by the Ardagh Metal Packaging USA, Inc. facility located at 936 Barracuda Street ("Ardagh" or "Facility") on Terminal Island in the Los Angeles Harbor/San Pedro Bay.

The responsible Owner(s) and/or Operator(s) of the Facility include Craig Walsh, George Menchen, David Wall, Ardagh Packing Holdings Limited and the Ardagh Group S.A. These individuals and entities are collectively referred to herein as the "Ardagh Group."

Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in violation of the Act and/or related permits. Section 505(b) of the Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act, 33 U.S.C. § 1365(a), a citizen must give notice of its intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur,

and, if the violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This letter ("Notice Letter") constitutes formal notice to the Facility and the Ardagh Group, pursuant to the Act, 33. U.S.C. §§ 1365(a) and (b), of Waterkeeper's intent to file a civil action against Ardagh for its violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342, and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 97-03-DWQ ("1997 Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 Permit").[1] As explained below, the 2015 Permit includes the same fundamental requirements and implements the same statutory mandates as the 1997 Permit. Waterkeeper may herein refer to the 1997 Permit and the 2015 Permit interchangeably as the "General Industrial Permit" or "Permit."

As detailed herein, Ardagh is in ongoing violation of the General Industrial Permit and the Clean Water Act. The Facility's unlawful discharges of polluted storm water adversely affect the Los Angeles Harbor and San Pedro Bay ("Bay" or "Receiving Waters"), and endanger the health and welfare of individuals and communities throughout the region. Violations of these requirements constitute ongoing violations for purposes of Clean Water Act enforcement. The Facility and the Ardagh Group are subject to civil penalties for all violations of the Act occurring since June 7, 2011. Unless the Facility takes the actions necessary to remedy the ongoing violations of the General Industrial Permit and the Act, Waterkeeper intends to file suit in U.S. District Court following expiration of the 60-day notice period, seeking civil penalties, injunctive relief, fees and costs.

I. Background

A. Los Angeles Waterkeeper

Waterkeeper is a non-profit public benefit corporation organized under the laws of California and is located at 120 Broadway, Santa Monica, California 90401. Waterkeeper is an organization of the Waterkeeper Alliance, the world's fastest growing environmental movement.

Founded in 1993, LAW is dedicated to the preservation, protection and defense of the rivers, creeks and coastal waters of Los Angeles County. The organization works to achieve this goal through litigation and regulatory programs that ensure water quality protection for all waterways in Los Angeles County. Where necessary to achieve its objectives, Waterkeeper directly initiates enforcement actions under the Act on behalf of itself and its members.

Waterkeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles basin, including many who live near and recreate in/around the Los Angeles Harbor and connected coastal waters. Waterkeeper members use local waters and waterways to

[1] The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015.

fish, surf, swim, sail, SCUBA dive and kayak. Additionally, Waterkeeper's members maintain water pollution and habitat monitoring programs, as well as coordinate various scientific studies.

The unlawful discharge of pollutants from the Facility into the Los Angeles Harbor/San Pedro Bay impairs the ability of LAW members to use and enjoy these waters. Thus, the interest of Waterkeeper's members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Clean Water Act and General Industrial Permit.

B. The Ardagh Facility's Owner(s) and/or Operator(s)

Information available to Waterkeeper indicates that the Facility is owned and/or operated by individuals Craig Walsh, George Menchen, David Wall, and Ardagh Metal Packaging USA, Inc. Ardagh Metal Packaging USA, Inc. is a Pennsylvania-based corporation registered with the California Secretary of State as entity number C2256565, and whose address is 600 North Bell Ave. (Suite 200) in Carnegie, Pennsylvania, 15106. Information available to Waterkeeper indicates that these individuals and entities are, in turn, directed, owned and/or operated by Ardagh Packing Holdings Limited and the Ardagh Group S.A., which are multinational producers of metal and glass products based in Ireland and Luxembourg, respectively.

C. The Clean Water Act and Storm Water Permitting

The objective of the Act is to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the Act prohibits the discharge of a pollutant from any point source[2] into waters of the United States except in compliance with other requirements of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342(p). In California, the EPA has delegated it authority to issue NPDES permits to the State Water Resources Control Board ("State Board"). 33 U.S.C. §§ 1342(b), (d). The Los Angeles Regional Water Quality Control Board ("Regional Board") is responsible for issuance and enforcement of the General Industrial Permit in Region 4, which covers both the Facility and Receiving Waters. In order to discharge storm water lawfully in California, the Facility must enroll in and comply with all terms and conditions of the Permit.

1. *The 1997 General Industrial Permit*

The 1997 Permit required that dischargers meet all applicable provision of Sections 301 and 402 of the Act. These provisions require control of pollutant discharges using Best Management Practices ("BMPs") that achieve either best available technology economically achievable ("BAT") or best conventional pollutant control technology ("BCT") to prevent or reduce pollutants.[3] 33 U.S.C. §§ 1311(b)(2)(A), (B). Rather than requiring the specific

[2] A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); see 40 C.F.R. § 122.2.

[3] Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BCT for conventional pollutants, which include Total Suspended Solids

application of BAT or BCT techniques to each storm water discharge, compliance with the terms and conditions of the 1997 Permit served as a proxy for meeting the BAT/BCT mandate. *See* 1997 Permit, Finding 10. Conversely, failure to comply with the terms and conditions of the 1997 Permit constituted a failure to subject discharges to BAT/BCT in violation of the Act.

2. *The 2015 General Industrial Permit*

The 2015 Permit retains the essential structure and mandate of the 1997 Permit, including the requirement to comply with BAT/BCT standards. The 2015 Permit requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary to achieve compliance with the effluent and receiving water limitations. In addition, the 2015 Permit requires all facility operators to sample storm water discharges more frequently than the 1997 Permit, and to compare the analytical results of sample testing to numeric action levels ("NALs") as opposed to the EPA Benchmarks. All facility operators are required to perform Exceedance Response Actions ("ERAs") as appropriate when sample testing indicates a NAL exceedance. Failure to comply with the terms and conditions of the 2015 Permit constitutes a failure to subject discharges to BAT/BCT in violation of the Act.

3. *Both Permits Applicable to Ardagh Facility in June 2016*

Both the 1997 Permit and the 2015 Permit generally require facility operators to: i) submit a Notice of Intent ("NOI") certifying the type of activity or activities undertaken at a facility and committing the operator to comply with the terms and conditions of the Permit; ii) eliminate unauthorized non-storm water discharges; iii) develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"); iv) perform monitoring of storm water discharges and authorized non-storm water discharges; and v) file an Annual Report summarizing the year's industrial activities and certifying compliance with the General Industrial Permit.

At present, the Facility is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit. *See Illinois v Outboard Marine, Inc.* 680 F.2d 473, 480-81 (7th Cir. 1982) (granting relief for violations of an expired permit); *Sierra Club v Aluminum Co of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of expired permits); *Pub. Interest Research Group of N.J. v Carter Wallace, Inc.* 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitations of an expired permit, when transferred to a newly issued permit, are viewed as currently in effect for enforcement purposes).

D. Coverage Under General Industrial Permit

Certain facilities that discharge storm water associated with industrial activity are required to apply for coverage under the General Industrial Permit by submitting a Notice of Intent ("NOI") to the State Board. *See* Permit 1997, Finding #12. Upon information and belief,

---

("TSS"), Oil and Gas ("O&G"), pH, BOD and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional, which must undergo BAT treatment prior to discharge. *Id.*; 40 C.F.R. § 401.15.

the Facility, then known as and owned by Impress USA, Inc., first obtained Permit coverage in March 2006 ("NOI 2006"); and then on May 7, 2015 obtained coverage under the 2015 Permit ("NOI 2015"). The Waste Discharge Identification ("WDID") number for the Facility is 4 19I020148. The two NOIs on file with the Regional Board indicate that the Ardagh Group owns and/or operates the Facility, and list the Primary Standard Industrial Classification ("SIC") code as 3411 (Metal Can Manufacturer).

II. The Ardagh Facility, the Los Angeles Harbor and Applicable Discharge Standards

A. The Facility and Discharge Locations

The Facility produces metal cans principally for packaging food products for human and pet consumption, but also for aerosol products. Industrial processes conducted at the site include two-piece can making, end making, coating, and palletizing finished product for shipment. Based on information contained in each of the NOIs on file with the State Board, as augmented by satellite mapping imagery available online and the May 6, 2016 reconnaissance visit conducted by Waterkeeper agents, the 177,650 square foot Facility is located on Terminal Island, California at 936 Barracuda Street. The Facility has at least three discharge locations into as many as four different storm sewer drains, three of which are located within the Facility's borders. The Facility is entirely covered by impervious and semi-impervious surfaces, and discharges directly to the Receiving Waters.

B. Industrial Activities at the Ardagh Facility

Pollutants associated with operations at the Facility include, but are not limited to: substances affecting pH and specific conductance ("SC"); metals, such as iron and aluminum; toxic metals, such as lead and zinc; total suspended solids ("TSS"); oil and grease ("O&G"); total organic carbon ("TOC"); chemical oxygen demand ("COD"); gasoline and/or diesel fuels; fuel additives; chemical metal coatings; and nitrates and nitrites as nitrogen. Furthermore, based on information available to Waterkeeper, the Facility is enrolled under the Resource, = Conservation, and Recovery Act ("RCRA") program, under which it is classified as a "large quantity generator."

Information available to Waterkeeper indicates that the Facility has not properly developed and/or implemented BMPs to address pollutant sources and avoid contaminated discharges as required by the Permit. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water during rain events.

As a consequence of the Facility's failure to develop and implement BMPs, during rain events storm water carries pollutants from the Facility into the storm sewer system and/or directly into the Receiving Waters. These illegal discharges of polluted storm water negatively impact Waterkeeper's members' use and enjoyment of the Los Angeles Harbor/San Pedro Bay, as well as associated water bodies and coastal resources, by degrading water quality, harming aquatic and aquatic-dependent life, and threatening human health and welfare.

C. Storm Water Pollution and the Facility's Receiving Waters

With every significant rainfall event millions of gallons of polluted storm water originating at industrial facilities pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. In Los Angeles County, these discharges contribute not only to the impairment of the Los Angeles Harbor/San Pedro Bay, but also the coastal waters, beaches and estuaries used by millions of residents and visitors to Southern California. Contaminated discharges threaten the health of the aquatic and associated terrestrial ecosystems in and around the Receiving Waters, and also the welfare of communities that live near and/or use these resources.

Polluted discharges from industrial facilities like Ardagh are known to contain substances affecting pH; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; COD; BOD; TSS; TOC; benzene; gasoline and diesel fuels, fuel additives; coolants; antifreeze; nitrate + nitrite nitrogen ("N+N"); substances affecting SC; O&G; and trash. Discharges of polluted storm water and non-storm water to the Receiving Waters pose carcinogenic, developmental and reproductive toxicity threats to the public, and adversely affect the aquatic environment.

The Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish and bird species, as well as macro-invertebrate and invertebrate species; as well as various migratory and resident pinniped and cetacean species.

Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance the Receiving Waters have for people in surrounding communities, including Waterkeeper members. The public's use of the Receiving Waters for water contact sports and fishing exposes many people to toxic metals, pathogens, bacteria and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The Regional Board issued the "Water Quality Control Plan—Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura County" ("Basin Plan"). *See* http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.html. The Basin Plan is designed to preserve and enhance water quality and protect the beneficial uses of all regional waters. Regional coastal waters identified in the Plan include bays, harbors, estuaries, beaches, the open ocean, and specifically includes the Los Angeles and Long Beach Harbors.

The Basin Plan identifies "Beneficial Uses" of coastal waters in the Region, including the Receiving Waters. Beneficial uses generally for these coastal waters provide habitat for marine life, and are used extensively for recreation, boating, shipping, commercial and sport fishing.

The specific Beneficial Uses for the Receiving Waters include: water contact recreation ("REC 1"); non-contact water recreation ("REC 2"); marine habitat that support marine ecosystems ("MAR"); and uses of water that support habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered ("RARE"). *See* Basin Plan, Table 2-3. And according to the 2010 303(d) List of Impaired Water Bodies, the Receiving Waters are impaired by Zinc.[4]

Polluted discharges from the Facility cause and/or contribute to the degradation of these already impaired waters, beaches, and recreational and wildlife resources. Contaminated storm water discharges, including those from the Facility, must be eliminated if the Los Angeles area's ecosystems have any change to regain their health.

D. Applicable Effluent Standards or Limitations

The General Industrial Permit requires all facilities to sample and analyze storm water discharges for the following parameters: pH, TSS, SC, and TOC or O&G. 1997 Permit, § B(5)(c)(i); 2015 Permit, §§ XI(B)(6)(a)-(b). As noted above, the Facility is classified under SIC Code 3411, which requires that all storm water samples are analyzed for additional contaminants, including Aluminum, Iron, Nitrates and Nitrites ("N+N"), and Zinc. *See* 1997 Permit, Table D; 2015 Permit, Table 1.

The EPA published "benchmark" levels as numeric thresholds to aid in determining whether a facility discharging industrial storm water had implemented the requisite BAT and/or BCT as mandated by the Act. *See United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, as modified effective May 9, 2009. EPA's benchmarks serve as objective measures for evaluating whether a permittee's BMPs achieve BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit. Under the 2015 Permit, the State Board replaced the use of "benchmarks" with Numeric Action Levels ("NALs"). *See* 2015 Permit, § V(A). NALs are derived from, and function similar to, EPA benchmarks. *See* 2015 Permit Fact Sheet, § I(D)(5). Benchmarks and NALs represent pollutant concentrations at which a storm water discharge could impair, or contribute to impairing, water quality and/or affect human health.

EPA benchmarks and/or NALs established for pollutants discharged from the Facility are summarized below at Table 1.

TABLE 1
BENCHMARK AND NAL VALUES FOR POLLUTANTS AT ARDAGH FACILITY

PARAMETER/ POLLUTANT	EPA BENCHMARK	ANNUAL NAL	INSTANTANEOUS MAX NAL
pH	6.0-9.0 s.u.	n/a	6.0-9.0 s.u.

[4] 2010 Integrated Report – All Assessed Waters, available at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last accessed on June 2, 2016).

TSS	100 mg/L	100 mg/L	400 mg/L
O&G	15 mg/L	15 mg/L	25 mg/L
SC	200 uhmos/cm	200 uhmos/cm	n/a
TOC	110 mg/L	110 mg/L	n/a
COD	120 mg/L	120 mg/L	n/a
Al	0.75 mg/L	0.75 mg/L	n/a
N+N	0.68 mg/L	0.68 mg/L	n/a
Fe	1.0 mg/L	1.0 mg/L	n/a
Zn	0.117 mg/L	0.26 mg/L	n/a

III. Violations of the Clean Water Act and the General Industrial Permit

The Act requires that any person discharging pollutants to waters of the United States from a point source obtain coverage under an NPDES permit, such as the General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). As described above, both the 1997 Permit and the 2015 Permit require that all dischargers meet all applicable provisions of Act's Sections 301 and 402. Rather than requiring specific application of BAT or BCT to each storm water discharge, compliance with the terms and conditions of the Permit serves as a proxy for compliance with the technology-based treatment requirements. *See e.g.* 1997 Permit, Finding 10. Thus, compliance with the General Industrial Permit constitutes compliance with the Act for purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E). Conversely, failure to comply with the terms and conditions of the Permit constitutes a violation of the Act for failure to subject discharges to BAT/BCT.

The citizen suit provisions of the Act provide that "any citizen" may commence a suit "against any person," including a corporation, "who is alleged to be in violation of an effluent standard or limitation under this chapter." 33 U.S.C § 1365(a)(1). The Act then defines "effluent standard or limitation" to include "a permit or condition" issued under section 402. *Id.* § 1365(f)(6). Accordingly, Waterkeeper may commence a suit alleging violations of the General Industrial Permit by the Facility. *See Natural Resources Defense Council v Southwest Marine, Inc.*, 236 F. 3d 985 (9th Cir. 2000) (allowing citizen action for alleged storm water permit violations holding company liable for discharges of "significant contributions of pollutants" and inadequate record keeping).

In the years since enrolling the the General Industrial Permit program, Ardagh has failed to carry out its Permit obligations, and thereby violated the Clean Water Act. As discussed in further detail below, the Facility is in ongoing violation of the General Industrial Permit, and its violations span at least the last 5 years. Specifically, the Facility has repeated discharged exceedingly high levels of pollutants, including, aluminum, iron and zinc, in violation of the Effluent Limitations and Receiving Water Limitations, and has failed and continues to fail to comply with monitoring and reporting requirements.

A. Discharges of Polluted Storm Water from the Facility in Violation of Effluent Limitations

Effluent Limitation section B(3) of the 1997 Permit and V(A) of the 2015 Permit require dischargers to reduce or prevent pollutants in their storm water discharges through the implementation of BMPs that meet BAT standards for toxic and non-conventional pollutants, and BCT standards for conventional pollutants.[5] As discussed above, the analytical results from a given facility are measured against EPAs benchmarks and/or the State Board's NALs to determine whether BMPs are adequate to qualify as meeting the statutory mandate.[6]

According to information available to Waterkeeper, including a thorough review of both electronic and hard copy files in the State Board's possession, the Facility has been in continuous violation of the Permit's Effluent Limitations for the entirely of the relevant statute of limitations—June 7, 2011 to June 7, 2016. The data available to Waterkeeper relevant to violations of the Permit's Effluent Limitation are summarized below at Table 2.[7]

TABLE 2
SAMPLING DATA DEMONSTRATES ONGOING EXCEEDANCES OF EFFLUENT LIMITATIONS FOR MULTIPLE POLLUTANTS

LINE	SAMPLE DATE	PARAMETER	OBSERVED CONCENTRATION	EPA BENCHMARK	APPLICABLE NAL	SAMPLE POINT
1	10/09/13	SC	727 uhmos/cm	200 uhmos/cm	n/a	S-1
2	10/09/13	SC	592 uhmos/cm	200 uhmos/cm	n/a	S-2
3	10/09/13	SC	393 uhmos/cm	200 uhmos/cm	n/a	S-3
4	2/27/14	pH	5.87 pH units	6.0-9.0 pH units	6.0-9.0 pH units	S-2
5	2/27/14	pH	5.81 pH units	6.0-9.0 pH units	6.0-9.0 pH units	S-3
6	7/18/15	TSS	111 mg/L	111 mg/L	0.75	S-1
7	7/18/15	N+N	3.28 mg/L	0.68 mg/L	0.68 mg/L	S-1

[5] Toxic pollutants are listed at 40 C.F.R. § 401.15 and conventional pollutants are listed at 40 C.F.R. § 401.16.
[6] The statute of limitations applicable to citizen enforcement actions under the CWA is 5 years. Lines 1-29 of Table 2 document violations that are beyond this 5-year limitations period. However, exceedances of benchmark values for storm water years 2000-2001 and 2003-2004 as depicted in lines 1-29 are evidence of a facility's failure to implement BMPs over time.
[7] The Facilities annual NAL values for the 2015-2016 storm water year are: Zn—3.852 mg/L, Fe—1.067 mg/L and N+N—1.352 mg/L. Each of these values exceeds the applicable parameter annual NALs values established in Table 2 of the 2015 Permit, which are: Zn—0.26 mg/L, Fe—1.0 mg/L and N+N—0.68 mg/L.

8	7/18/15	N+N	1.03 mg/L	0.68 mg/L	0.68 mg/L	S-1
9	7/18/15	N+N	1.74 mg/L	0.68 mg/L	0.68 mg/L	S-2
10	7/18/15	N+N	5.87 mg/L	0.68 mg/L	0.68 mg/L	S-3
11	7/18/15	Zn	6.43 mg/L	0.117 mg/L	0.26 mg/L	S-1
12	7/18/15	Fe	6.66 mg/L	1.0 mg/L	1.0 mg/L	S-1
13	7/18/15	Zn	6.24 mg/L	0.117 mg/L	0.26 mg/L	S-2
14	7/18/15	Fe	1.50 mg/L	1.0 mg/L	1.0 mg/L	S-2
15	2/23/01	Zn	5.70 mg/L	0.117 mg/L	0.26 mg/L	S-3
16	9/15/15	N+N	0.918 mg/L	0.68 mg/L	0.68 mg/L	S-2
17	9/15/15	Zn	2.17 mg/L	0.117 mg/L	0.26 mg/L	S-1
18	9/15/15	Zn	4.54 mg/L	0.117 mg/L	0.26 mg/L	S-2
19	9/15/15	Fe	1.66 mg/L	1.0 mg/L	1.0 mg/L	S-2
20	12/22/15	Zn	2.28 mg/L	0.117 mg/L	0.26 mg/L	S-1
21	12/22/15	Zn	4.97 mg/L	0.117 mg/L	0.26 mg/L	S-2
22	12/22/15	Zn	4.09 mg/L	0.117 mg/L	0.26 mg/L	S-3
23	1/05/16	Fe	1.54 mg/L	1.0 mg/L	1.0 mg/L	S-1
24	1/05/16	TSS	109 mg/L	100 mg/L	100 mg/L	S-2
25	1/05/16	N+N	2.51 mg/L	0.68 mg/L	0.68 mg/L	S-2
26	1/05/16	Fe	1.49 mg/L	1.00 mg/L	1.00 mg/L	S-2
27	1/05/16	Zn	7.60 mg/L	0.117 mg/L	0.26 mg/L	S-1
28	1/05/16	Zn	1.05 mg/L	0.117 mg/L	0.26 mg/L	S-2
29	1/05/16	Zn	2.50 mg/L	0.117 mg/L	0.26 mg/L	S-3

The results of storm water sample analysis between October 2013 and January 2016 (lines 1-31) show consistent exceedances of the EPA benchmark levels and applicable NAL values for various indicator parameters, including SC, pH, and TSS, as well as all parameters for which SIC code 3411 facilities must sample/analyze, including Aluminum, Iron, N+N and Zinc. In numerous cases the Facility has self reported to the Board exceedances of parameters by orders of magnitude—see e.g. line 10 exceedance of the relevant N+N benchmark by more than 800%, and line 27 exceedance of Zn NAL by more than 6400%.[8] Information available to Waterkeeper, including the sampling data summarized above in Table 2, demonstrates that the Facility has failed and continues to fail to develop or implement BMPs that achieve compliance with the Act's BAT/BCT mandates.

[8] Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

Waterkeeper puts Ardagh on notice that it violates the Permit's Effluent Limitations and the Act every time it discharges storm water without adequate BMPs (see Exhibit A "Storm Event Summary" listing storm events between 2011 and 2016 likely to produce sufficient storm water discharges to allow sampling/analysis at the Facility). These discharge violations are ongoing and will continue every time the Facility discharges polluted storm water without developing and implementing BMPs consistent with BAT/BCT standards. Waterkeeper may supplement and update Table 2 as additional data becomes available. Ardagh is subject to civil penalties for all violations of the Clean Water Act occurring since June 7, 2011.

Further, Waterkeeper puts Ardagh on notice that the 2015 Permit Effluent Limitation V.A is a separate, independent requirement which with the Facility must comply, and that carrying out the iterative process triggered by exceedances of NALs listed in Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. While exceedances of the NALs demonstrate that the Facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[9] And even if Ardagh submits an Exceedance Response Action Plan as required by Section XII of the 2015 Permit, the violations of Effluent Limitations V.A described herein are ongoing.

B. Ardagh's Discharge of Polluted Storm Water Violates the Permit's Receiving Water Limitations

First, Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[10] The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, § VI.A. Discharges that contain pollutants in excess of an applicable WQS violate these Receiving Water Limitations. *See* 1997 Permit, § C(2); 2015 Permit, § VI.A.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of at least two of the applicable WQS: 1) the Basin Plan; and 2) the EPA's California Toxics Rule ("CTR"). See 40 C.F.R. § 131.38. Both the Basin Plan and the CTR set the numeric limit for Aluminum at 1 milligram per liter (mg/L), which is identical to the level set in the EPA's benchmarks used in the 1997 Permit and the 2015 Permit's NAL values. Therefore, any and all exceedances of a 1 mg/L limit for Aluminum (as

[9] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

[10] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38, and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

summarized in Table 3) is a separate and distinct violation of the Permit's Receiving Water Limitations. Discharges from the Facility in excess of the numeric limits set in these WQSs constitute individual violations of Receiving Water Limitations.

TABLE 3
SAMPLING DATA DEMONSTRATES ONGOING EXCEEDANCES OF RECEIVING WATER LIMITATION FOR ALUMINUM

LINE	SAMPLE DATE	PARAMETER	OBSERVED CONCENTRATION	EPA BENCHMARK	APPLICABLE NAL	SAMPLE POINT
1	1/05/16	Al	1.19 mg/L	0.75 mg/L	0.75 mg/L	S-1
2	1/05/16	Al	1.83 mg/L	0.75 mg/L	0.75 mg/L	S-2

Second, Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same Receiving Water Limitation. *See* 2015 Permit, § VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of these Receiving Water Limitations. *See* 1997 Permit, §C(1); 2015 Permit, § VI.B.

Discharges of elevated concentrations of pollutants in the Facility's storm water adversely impact human health. The Facility discharges storm water that contains chemicals, including Zinc, which can be acutely toxic and/or have sub-lethal impacts on humans and wildlife, and is likely to adversely affect overall ecosystem health. These harmful discharges from the Facility are violations of the Permit's Receiving Water Limitations. *See* 1997 Permit, § C(1); 2015 Permit, § VI.B. The EPA 303(d) List of Water Quality Limited Segments lists the Facility's Receiving Waters as Los Angeles Harbor—Fish Harbor, and identifies the Zinc as among those contaminants for which the waterbody is impaired.[11] Thus, data from Table 2 lines 11, 15, 17, 18, 20-22, 27-29 establish independent violations of the Permit's Receiving Water Limitations.

Waterkeeper puts Ardagh on notice that that Permit's Receiving Water Limitations are violated each time polluted storm water discharges from the Facility, including each event summarized in Exhibit A. These discharge violations are ongoing and will continue every time contaminated storm water is discharged. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each discharge from the Facility that adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water

[11] See State Board website at http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

Limitation VI.B of the 2015 Permit, and Section 301(a) of the Clean Water Act. 33 U.S.C. § 1311(a). Waterkeeper will update violation dates as additional data becomes available.

C. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program for the Facility

The 1997 Permit requires industrial facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit contains substantially identical requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to detect and measure the concentrations of pollutants in a facility's discharges to determine compliance with the Permit's Effluent Limitations and Receiving Water Limitations. An adequate Monitoring and Reporting Program must be reviewed and revised in response to analyses and observations in order to ensure that BMPs are effectively reducing and/or eliminating pollutants from the Facility's activities from entering the Receiving Waters. As discussed above, the Permit includes specific provisions requiring the Facility to respond to NAL value exceedances by revising and improving BMPs when analytical results demonstrate breaches. *See* 2015 Permit, § XII.

The 1997 Permit and 2015 Permit both contain the same basic requirements, which include conducting visual observations of storm water discharges and authorized non-storm water discharges, collect and analyze samples of storm water discharges for relevant pollutants, revise and change the SWPPP and/or facility operations as necessary in response to analytical data, and file and certify an Annual Report. *See e.g.* 1997 Permit §§ (B)3-(B)16.

1. *Failure to Sample and Analyze for Mandatory Parameters*

The 1997 Permit required dischargers to collect storm water samples during the first hour of discharge from the first storm event of a wet season, and at least one other storm event during a reporting year.[12] *See* 1997 Permit, § B(5). The 2015 Permit created a more demanding schedule, and requires the Facility to sample and analyze four storm water discharges over the course of a reporting year. *See* 2015 Permit, § XI(B)(2). Under the 1997 Permit, facilities must sample from qualifying storm events, which occur when there is a discharge of storm water during facility operating hours that was preceded by at three working days without a storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit broadens the definition of qualifying storm event by requiring only 48-hours without a storm water discharge from any drainage area. *See* 2015 Permit, § XI(B)(1)(b). A sample must be collected from each discharge point at the Facility, and in the event that an operator fails to collect from each discharge point, the operators must still collect samples from two other storm events, and explain in the Annual Report why the first storm event was not sampled.

[12] A storm water reporting year runs from June 1 to July 31, e.g. June 1, 2012 through July 31, 2013 constitutes storm water reporting year 2012-2013.

All industrial facilities must analyze samples collected for TSS, pH, Specific Conductance, and either TOC or O&G.[13] 1997 Permit, § B(5)(c)(i); 2015 Permit § XI(B)(6). Facilities must also analyze their storm water samples for "[]toxic chemical and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, § B(5)(c)(ii); 2015 Permit § XI(B)(6)(c). Facilities with certain SIC Codes must also analyze for additional parameters that are likely to be present in storm water discharges from their industrial category. 1997 Permit § B(5)(c)(iii); 2015 Permit XI(B)(6)(d). Ardagh has repeatedly failed to comply with these monitoring and reporting requirements.

A facility with SIC code 3411 must analyze all samples for four additional parameters likely to be present due to the specifics of industrial processes taking place at the facility—including Zinc, Iron, Aluminum and N+N. 1997 Permit, Table D; 2015 Permit, Table 1.

Waterkeeper's review of Ardagh's monitoring data indicates that the Facility has failed to analyze for any of the Table D/Table 1 parameters in each and every stom water sample taken during the 2011-2012, 2012-2013, 2013-2014 and 2014-2015 wet seasons. These failures are especially concerning given that the Facility was the source of substantial spill of ether glycol in 2013 that should have resulted in a thorough and detailed review of the Facility's compliance with any and all Clean Water Act requirements, and uncovered the Facility's failure to complete analyses for parameters required for SIC Code 3411 facilities. These failures result in at least 30 distinct and ongoing violations of the Permit.

2. *Failure to Comply with the Permit's Reporting Requirements*

Section B(14) of the 1997 Permit requires Ardagh to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes substantially identical annual reporting requirement. *See* 2015 Permit, Section XVI.

Ardagh has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2010-2011 Annual Report, Ardagh has certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources and additional BMPs are not needed; and (3) the SWPPP complies with the General Industrial Permit, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above levels set by EPA's benchmark, the State Board's NALs or levels established in applicable WQSs, and the Facility failed to sample for critically important parameters despite evidence of substantial pollutants in

[13] Under the 2015, facilities are no longer required to analyze storm water samples for Specific Conductance.

storm water discharges. These facts demonstrate that the SWPPP's BMPs do not adequately address existing potential pollutant sources, and any certification to the contrary was erroneous and/or false.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. *See* 1997 Permit, § C(11)(d). Ardagh has failed, and continues to fail, to report non-compliance as required. The massive exceedances in Specific Conductance during 2013 and low pH values in 2014 should have should have triggered reporting to the Board and revisions to both the SWPPP and operational procedures.

Information available to Waterkeeper indicates that Ardagh has submitted incomplete and/or incorrect Annual Reports that fail to comply with the General Industrial Permit. As such, the Facility is in daily violation of the Permit, and every day the Facility operates without reporting as required by the Permit is a separate and distinct violation of the Permit and Section 301(a) of the Act. 33 U.S.C. §1311(a). Ardagh has been in daily and continuous violation of the Permit's reporting requirements every day since at least June 7, 2011. These violations are ongoing. Waterkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements. *See* 2015 Permit, §§ XII, XVI.

3. *Failure to Identify and Sample from All Discharge Locations*

Based on information available to Waterkeeper, the Facility has failed to identify all discharge locations, and has failed to take storm water samples from these unidentified and acknowledged locations.

D. Failure to Sample for Parameters Required on Account of Facility's RCRA Enrollment

The Facility has failed for each of the past five storm water years to analyze storm water samples for pollutants that may be present due to the Facility's RCRA status as a "large quantity generator." 1997 Permit, Section B(5)(c)(ii); 2015 Permit, Section XI(B)(6)(c).

IV. Persons Responsible for the Violations

Waterkeeper puts Ardagh Metal Packaging USA, Inc., Craig Walsh, George Menchen, David Wall, Ardagh Packing Holdings Limited and the Ardagh Group S.A. on notice that they are the entities and/or persons responsible for the violations described above. If additional corporate or natural persons are identified as also being responsible for the violations described herein, Waterkeeper puts Ardagh Metal Packaging USA, Inc., Craig Walsh, George Menchen, David Wall, Ardagh Packing Holdings Limited and the Ardagh Group S.A. on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party

Bruce Reznik
Executive Director
Los Angeles Waterkeeper
120 Broadway, Suite 105
Santa Monica, CA 90401

VI. Counsel

Please direct all communications to legal counsel retained by Waterkeeper for this matter:

Gideon Kracov
Law Office of Gideon Kracov
801 Grand Avenue, Floor 11
Los Angeles, CA 90017
gk@gideonlaw.net

VII. Penalties

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the Facility to a penalty of up to $37,500 per day per violation. In addition to civil penalties, Waterkeeper will seek injunctive relief to prevent further violations of the Act pursuant to Sections 505(a) and (d), and such other relief as permitted by law. *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

Waterkeeper believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. Waterkeeper intends to file a citizen suit under Section 505(a) of the Act against the Ardagh Facility and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, Waterkeeper would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, Waterkeeper suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period as Waterkeeper does not intend to delay the filing of a complaint in federal court.

Sincerely,

Gideon Kracov
Lawyer for Los Angeles Waterkeeper

Attachment A – Rain Event Data for Ardagh Facility: 2011 through 2016

Cc: Loretta Lynch, U.S. Department of Justice

Gina McCarthy, U.S. Environmental Protection Agency
Alexis Strauss, U.S. Environmental Protection Agency (Region IX)
Thomas Howard, State Water Resources Control Board
Samuel Unger, Regional Water Quality Control Board (Region 4)

VIA U.S. CERTIFIED MAIL RETURN RECEIPT REQUESTED

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-001

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, California 94105

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Samuel Unger, Executive Officer
LA Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Exhibit A

STORM EVENT SUMMARY: June 2011-May 2016

Days with Rainfall above 0.1 inches

https://www.wunderground.com/history/airport/KCQT/2016/5/16/MonthlyHistory.html?req_city=Los%20Angeles&req_state=CA&reqdb.zip=90001&reqdb.magic=1&reqdb.wmo=99999)

Date (mm/dd/yy)	Rainfall (inches)
10/05/11	1.15
11/04/11	0.16
11/06/11	0.36
11/12/11	0.16
11/20/11	0.90
12/12/11	0.79
12/13/11	0.17
01/21/12	0.68
01/23/12	0.62
02/15/12	0.13
03/17/12	0.75
03/25/12	0.91
04/10/12	0.15
04/11/12	0.58
04/13/12	0.49
04/25/12	0.20
04/26/12	0.29
11/17/12	0.28
11/29/12	0.21
11/30/12	0.46
12/03/12	0.19
12/18/12	0.43
12/24/12	0.46
12/26/12	0.33
12/29/12	0.45
01/06/13	0.12
01/24/13	0.79
01/25/13	0.17
02/19/13	0.18
03/08/13	0.49
05/06/13	0.69
11/21/13	0.29
11/29/13	0.23
12/19/13	0.11
02/02/14	0.14
02/27/14	1.05

02/28/14	2.24
03/01/14	1.00
03/02/14	0.17
04/01/14	0.25
11/01/14	0.18
11/30/14	0.30
12/02/14	1.21
12/02/14	0.31
12/12/14	1.60
12/16/14	0.41
12/17/14	0.15
12/30/14	0.19
01/10/15	0.48
01/11/15	0.50
02/22/15	0.70
02/28/15	0.11
03/01/15	0.66
03/02/15	0.21
04/07/15	0.13
05/08/15	0.18
09/15/15	2.39
10/05/15	0.40
12/13/15	0.16
12/19/15	0.26
01/05/16	1.61
01/06/16	0.80
01/07/16	0.30
01/31/16	0.43
02/17/16	0.58
02/18/16	0.21
03/06/16	0.64
03/07/16	0.38
03/11/16	0.52
04/08/16	0.14